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8 Bayside Advisory LLC

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 CASE NO.: 4:20-mc-80214-DMR

14 IN RE DMCA § 512(h)
15 SUBPOENA TO TWITTER, INC.

**DECLARATION OF ROBERT E. ALLEN
IN SUPPORT OF PETITIONER BAYSIDE
ADVISORY LLC'S OPPOSITION TO
TWITTER'S MOTION TO QUASH**

16 Date: March 11, 2021
17 Time: 1:00 p.m.
18 Judge: Hon. Donna M. Ryu
Courtroom 4, 3rd Floor

1 **DECLARATION OF ROBERT E. ALLEN**

2 I, Robert E. Allen, declare as follows:

3 1. I am a partner with the law firm of Glaser Weil Fink Howard Avchen & Shapiro
4 LLP, counsel of record for Bayside Advisory LLC (“Bayside”). I have personal knowledge of the
5 facts contained herein and, if called upon to do so, could and would testify competently thereto.

6 2. I submit this declaration in support of Petition Bayside Advisory LLC’s Opposition
7 to Twitter’s Motion to Quash.

8 3. Bayside is the owner of the copyrights to the six Photographs¹ at issue in this matter.
9 Bayside is not and has not ever been owned or controlled by Brian Sheth, Robert Smith, or Bob
10 Brockman. Brian Sheth, Robert Smith, or Bob Brockman, do not own, and have not ever owned,
11 any interest in the copyrights to the Photographs.

12 4. Attached hereto as **Exhibit 1** are copies of the tweets containing the Photographs at
13 issue, as they appeared on MoneyBags’ Twitter feed before Twitter disabled access to the
14 Photographs.

15 5. Attached hereto as **Exhibit 2** is a copy of the October 29, 2020 DMCA Notice. The
16 DMCA Notice was sent by email and Federal Express to Twitter’s designated agent for receiving
17 notifications of infringement under 17 U.S.C. § 512(c)(2), as found on the Copyright’s Office’s site:
18 <https://dmca.copyright.gov/osp/publish/history.html?search=twitter&rid=dc1c7b1483dd473e86a9ab5a385ce86d>.

20 6. Attached hereto as **Exhibit 3** is a copy of the automated email dated October 29,
21 2020 that I received from Twitter, rejecting the DMCA Notice because it was attached to the email,
22 and directing me to use Twitter’s copyright compliant form.

23 7. Attached hereto as **Exhibit 4** is a copy of Twitter’s automated email dated November
24 2, 2020, acknowledging receipt of the DMCA Notice but stating that it did not have enough
25 information, and again directing me to use Twitter’s copyright compliant form. Contrary to the
26 statements in this automated email, the DMCA Notice contained all of the information required

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¹ Capitalized terms not otherwise defined herein have the same meaning as assigned to them in
Bayside’s Opposition brief.

pursuant to Section 512(c)(3), including all identifying information of the Photographs on Twitter's site and their location.

8. Twitter's "copyright complaint form" can only be filed by a Twitter subscriber, thereby requiring me to register as a user with Twitter. I filled out this form and submitted it to Twitter on November 2, 2020. Attached hereto as **Exhibit 5** is a copy of Twitter's email dated November 9, 2020, confirming that it had removed access to the Photographs.

9. Attached hereto as **Exhibit 6** is a copy of my letter dated January 20, 2021, which I sent to counsel for Twitter.

10. I have examined the complete Twitter feed of @CallMeMoneyBags and have uncovered no clues as to MoneyBags' identity or location. I have also examined the EXIF data associated with the Photographs posted by MoneyBags, and this data also contains no clues as to MoneyBags' identity or location. I, on behalf of Bayside, have no alternative means for uncovering MoneyBags' identity.

11. Attached hereto as **Exhibit 7** is a copy of the email chain between counsel for Twitter and me, including messages dated from January 4, 2021 to January 22, 2021.

12. Attached hereto as **Exhibit 8** is a copy of Twitter's Terms of Service, accessed at <https://twitter.com/en/tos>, as of February 3, 2021.

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

20 Executed on February 4, 2021 at Los Angeles, California.

/s/ Robert E. Allen
Robert E. Allen